

**DEPARTMENT OF STATE REVENUE
REVENUE RULING #ST 96-08
SEPTEMBER 18, 1996**

NOTICE: Under IC 422-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Sales/Use Tax - Need For Registration Of A Retirement Facility and Requirement To Issue Exemption Certificates To Its Food Vendors

Authority: IC 6-2.5-8-1; IC 6-2.5-5-20

Clarification of the taxpayer's tax status is requested with regard to the food purchased for consumption by its residents.

STATEMENT OF FACTS

The taxpayer manages an independent living facility in Indiana. The rental package includes meals, rent, housekeeping and transportation and caters to the elderly. The taxpayer purchases bulk grocery items and prepares the food provided as meals to its residents. The food vendors have requested an exemption certificate from the facility. The facility is not registered as a retail merchant with the Department.

DISCUSSION

In accordance with Indiana Code 6-2.5-8-1 a retail merchant may not make retail transactions in Indiana unless he has applied for a registered retail merchants certificate. Retail transactions are codified at Indiana Code 6-2.5-4 and encompass the following:

- Selling At Retail
- Wholesale Sales
- Water Softening and Conditioning
- Renting Or Furnishing Rooms Or Accommodation For Less Than 30 Days
- Utility Services
- Proprietary Activities Of Governmental Units
- Sale Of Property To Be Added To Structures
- Rental Or Leasing Of Tangible Personal Property
- Cable Television Service
- Certain Auction Sales

The taxpayer's rental package provided to its residents does not fall within the parameters of any of the retail transactions codified by statute. Therefore, it is not required to register with the Department as a retail merchant unless it has other activities in addition to its rental package. Examples of other activities requiring registration and collection of sales tax would include the sale of prepared meals to guests or employees, vending machine sales or sales of items from a commissary.

The purchase of grocery items from bulk food vendors qualifies for an exemption from tax under Indiana Code 6-2.5-5-20. This exemption is based on the nature of the item sold rather than its use and is defined to include the following:

- Cereal And Cereal Products
- Milk And Milk Products, Including Ice Cream
- Meat And Meat Products
- Fish And Fish Products
- Eggs And Egg Products
- Vegetables And Vegetable Products
- Fruit And Fruit Products, Including Fruit Juices
- Sugar, Sugar Substitutes, And Sugar Products
- Coffee And Coffee Substitutes
- Tea, Cocoa, And Cocoa Products
- Spices, Condiments, Extracts, And Salt
- Oleomargarine

Specifically excluded from this exemption are the following items:

- Candy, Confectionery, And Chewing Gum
- Alcoholic Beverages

Cocktail Mixes
Soft Drinks, Sodas, And Other Similar Beverages
Medicines, Tonics, Vitamins, And Other Dietary Supplements
Water (Except Natural Spring Water), Mineral Water, Carbonated Water, And Ice
Pet Food
Food Prepared, Or Served For Consumption At A Location, Or On Equipment Provided By The Retail Merchant
Meals Served By The Retail Merchant Off The Merchants Premises
Food Sold By A Retail Merchant Who Ordinarily Bags, Wraps, Or Packages The Food For Immediate Consumption On Or Near The Merchants Premises, Including Food Sold On A "Take Out" or "To Go" Basis
Food Sold Through A Vending Machine

The bulk food sold to the taxpayer by the food vendors are not prepared meals, therefore the exclusion noted above for prepared meals does not apply to the taxpayer's purchase of grocery items. The provision of meals to residents is not part of a retail transaction subject to tax and the purchases of the grocery items to prepare those meals qualifies for an exemption as grocery items. There is no need to provide an exemption certificate to the bulk food vendors. The bulk food vendors should not collect sales tax on those items qualifying for exemption as grocery items. If you purchase "non-grocery" items from the same vendor, tax should be collected on those "non-grocery" purchases.

RULING

The taxpayer is not required to register with the Department as a retail merchant if it does not engage in any retail transactions. The rental package provided to its residents is not a retail transaction. The purchase of the grocery items (as defined by statute) is not subject to tax.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

Indiana Department of Revenue